

## Business Immigration in the Era of COVID-19 Update: Presidential Proclamations, Travel Restrictions, Resumption of Premium Processing and the Reopening of USCIS

As we reported in our [recent information memo](#), COVID-19 has created an evolving immigration environment. The related federal agencies and the White House have responded with a number of temporary policy and procedural changes to help minimize the spread of the virus in the U.S. and to help employers comply with various laws during this extremely challenging time. It remains essential for employers to maintain immigration compliance during the COVID-19 emergency and to take the steps necessary to maintain the nonimmigrant status and work authorization of their foreign national employees. In addition, now that businesses and organizations are beginning to reopen pursuant to government guidelines, employers are advised to keep abreast of the latest legal developments and various obligations they may have over the next few months as we slowly return to our workplaces.

### Presidential Proclamations

Over the last several weeks, the White House issued two Presidential Proclamations specific to foreign workers, students and researchers. On April 23, 2020, the [“Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak”](#) took effect, and continues in effect through June 22, 2020, at which point it will either expire or be continued “as necessary.” This Proclamation bans **immigrants** seeking permanent residence (green cards) from outside the U.S. or through consular processing. The Proclamation affects the following: parents and adult children of U.S. citizens; spouses and all children of permanent residents; diversity visa program applicants; and all employment-based visa applicants, except EB-5 investor visas. The following are exempted from the ban: nonimmigrant visa holders (H-1B, F-1, O-1, etc.); any immigrant abroad who already has an immigrant visa (permanent resident or green card) or travel document as of April 23, 2020; spouses and minor children of U.S. citizens; employment-based immigrant visa applicants as a doctor, nurse, health care worker, etc., and essential to combating COVID-19; asylum seekers and refugees. The Proclamation requires the Secretaries of the U.S. Departments of Labor, Homeland Security and State, within 30 days from the effective date of the Proclamation, to review all nonimmigrant programs and recommend to the President other appropriate measures to stimulate the U.S. economy and ensure the prioritization, hiring and employment of U.S. workers.

On May 29, 2020, the [“Proclamation on the Suspension of Entry as Nonimmigrants of Certain Students and Researchers from the People’s Republic of China”](#) was issued. The Proclamation took effect at noon on June 1, 2020 and will remain in effect until terminated by the President. While this Proclamation is not directly related to the COVID-19 pandemic, employers should take note if they employ Chinese individuals in F or J nonimmigrant status. This Proclamation applies to graduate and higher level students and researchers from the People’s Republic of China (PRC) applying for F or J visas or seeking entry into the U.S. who “either receives funding from or who is currently employed by, studies at, or conducts research at or on behalf of, or has been employed by, studied at, or conducted research at or on behalf of, an entity in the PRC that implements or supports the PRC’s ‘military-civil fusion strategy.’” In the Proclamation, “military-civil fusion strategy” is defined as “actions by or at the behest of the PRC to acquire and divert foreign technologies, specifically critical and emerging technologies, to incorporate into and advance the PRC’s military capabilities.” Undergraduate students from the PRC and graduate and higher level Chinese students who are studying and researching in fields that would not contribute to the PRC’s military-civil fusion strategy are exempt from this Proclamation, as are U.S. lawful

permanent residents and their spouses, spouses of U.S. citizens, foreign nationals in the U.S. armed forces and their spouses and children, and foreign nationals whose entry into the U.S. would further important U.S. law enforcement objectives or is in the national interest. The Secretaries of State and Homeland Security are charged with identifying those who are banned from entering the U.S. under this Proclamation and those who may be exempt. In addition, the Secretary of State is to consider whether nationals of the PRC currently in the U.S. on F or J visas who meet the ban criteria set forth in the Proclamation should have their visas revoked. The Departments of State and Homeland Security are expected to provide additional details on the application of this Proclamation and who is subject to the ban. While the scope of this Proclamation may seem narrow, it may have a chilling effect on Chinese foreign nationals seeking to study or work in the U.S.

### **Travel Restrictions**

Travel restrictions implemented by the White House and the U.S. Department of State during the COVID-19 pandemic may continue to affect current employees and new hires seeking to enter or return to the U.S.

#### *U.S. Entry Restrictions*

Due to four Presidential Proclamations made between the end of January and mid-March, no foreign national can enter the U.S. if they were present in Iran, China (excluding Hong Kong and Macau), Schengen Area countries, Ireland and the United Kingdom within 14 days of requesting admission to the U.S. On May 24, 2020, another Presidential Proclamation was issued, imposing the same restrictions on those seeking to enter the U.S. from Brazil. This Proclamation took effect on May 29, 2020. These travel restrictions remain in effect until terminated by the President.

The current restrictions on U.S. entry do not apply to U.S. citizens, lawful permanent residents and other limited groups of travelers (e.g., immediate family members of U.S. citizens who are not citizens themselves), but the entry of those individuals to the U.S. may be delayed under the circumstances. In addition, upon return, these individuals will continue to travel to 1 of 13 designated airports in the U.S., undergo enhanced entry and medical screening at the airport and be required to self-quarantine for a 14-day period.

#### *Canada and Mexico - Non-Essential Travel Still Prohibited*

Since March 20, 2020, the U.S. has prohibited non-essential travel (e.g., tourism or recreational in nature) between the U.S. and Canada and the U.S. and Mexico. This restriction has been extended three times and now expires as of 11:59 p.m. on June 22, 2020. This restriction does not apply to U.S. citizens, lawful permanent residents, business travelers and those with valid U.S. travel documents (e.g., U.S. visa stamp or advance parole), but business travelers and those with U.S. travel documents may face additional scrutiny at the borders. Essential travel currently includes travel for medical treatment, to attend educational institutions, for emergency response and public health purposes, to work in the U.S., and for trade and business. Those crossing the borders should be sure to carry letters from their employers and other necessary documents proving that their travel to the U.S. is essential.

#### *Availability of U.S. Embassy and Consulate Services*

Since mid-March, routine visa services at all U.S. embassies and consulates and all scheduled appointments have been canceled. The latest information regarding the possible reopening of embassies and consulates and rescheduling of services is that each post will open on its own timeline based on the specific situation in the country where the consulate or embassy is located. Emergency and mission critical visa services are still being provided, but only as resources allow. In addition, services for U.S. citizens continue to be available and information regarding the same can be found on the individual websites of each embassy or consulate. In addition to the travel restrictions in place, the suspension of routine visa services abroad will continue to have an impact on employees attempting to travel to the U.S. as there will be considerable delays in completing visa processing abroad once the posts begin to reopen.

## The Latest From U.S. Citizenship and Immigration Services (USCIS)

USCIS offices have been closed to the public since mid-March, but most are now scheduled to reopen on June 4, 2020 for the provision of routine, face-to-face services including adjustment interviews and biometrics. The field offices in New York City will not open until June 15, 2020 or later.

### *Resumption of Premium Processing Service*

On March 20, 2020, USCIS temporarily suspended premium processing services on all Form I-129 (e.g., H-1B, O-1, etc.) and eligible Form I-140 (employment-based permanent residence) petitions until further notice. On May 29, 2020, employers were relieved to learn that USCIS would be resuming premium processing in the following phases over the next month:

- Effective June 1, premium processing will resume on all eligible Form I-140 petitions.
- Effective June 8, premium processing will resume on pending cap-exempt H-1B visa petitions filed before June 8, as well as all other pending Form I-129 petitions eligible for premium processing and filed before June 8.
- Effective June 15, USCIS plans to resume premium processing for H-1B petitions requesting premium processing by filing a Form I-907 concurrently with their Form I-129 (or request for a petition filed on or after June 8) and are exempt from the cap because the employer is cap-exempt or because the beneficiary will be employed at a qualifying cap-exempt institution, entity or organization (such as an institution of higher education, a nonprofit research organization or a governmental research organization) or the beneficiary is cap-exempt based on a Conrad/IGA waiver under INA section 214(l).
- Effective June 22, USCIS plans to resume premium processing for all other Form I-129 petitions including all H-1B cap-subject petitions, for both premium processing upgrades and concurrently filed Forms I-907 and all other Form I-129 petitions for nonimmigrant classifications eligible for premium processing and requesting premium processing by filing Form I-907 concurrently with Form I-129.

USCIS cautioned that the effective dates for resumption of premium processing service are subject to change as more premium processing requests are made. The agency will announce any changes to the dates accordingly. Nonetheless, the resumption of premium processing is a relief for employers, especially those looking to onboard employees in the near future.

### *Electronically Reproduced Original Signatures Still Accepted*

As we reported previously, due to the COVID-19 pandemic, USCIS has agreed to accept all forms and documents with electronically reproduced original signatures – scanned, faxed, photocopied or similarly reproduced – instead of “wet” signatures. This accommodation remains in effect as of the date of this writing. Employers must retain the original documents with the “wet” signatures in case they are requested by USCIS at a future date. As employers return to their offices, they should make sure their files are updated to include the documents with the original signatures.

### **Form I-9 Compliance**

As we previously reported, on March 20, 2020, the Department of Homeland Security (DHS) announced its “Flexibility in Completing Form I-9.” As a result of this policy change, the Form I-9 physical presence requirements were deferred for employers for 60 days or within three business days after termination of the COVID-19 national emergency, whichever comes first. This change in policy was set to expire on May 19, 2020, but was extended for an additional 30-day period through June 18, 2020. As a reminder, under this policy change, the rules are as follows:

- Section 1 of Form I-9 must still be completed on or before the employee's start date. Employers are permitted to inspect the employee's documents remotely (e.g., over video link, fax or email, etc.) and obtain, inspect and retain copies of the documents within three business days in order to complete Section 2 of Form I-9.
- After normal business operations resume and employers are able to physically inspect documents in front of an employee, employers should enter "COVID-19" as the reason for the physical inspection delay in the Additional Information field in Section 2 of Form I-9. Physical inspection must occur within 3 business days once normal operations resume.
- Once the documents have been physically inspected, employers should add "documents physically examined" with the date of inspection to the "Additional Information" field in Section 2 on Form I-9, or in Section 3, if the employee is being reverified or rehired.

It is important to note that this policy change only applies to employers and workplaces that are operating remotely. According to DHS, for those employers who have employees physically present at a work location, no exceptions are being made at this time for in-person verification of identity and employment eligibility documentation. The DHS also advises that it will evaluate on a case-by-case basis when there are newly hired or existing employees who are subject to COVID-19 quarantine or state lockdown protocols. At all times, employers can still utilize authorized representatives to complete the physical inspection of identity and work authorization documents and to complete Forms I-9 on their behalf. The authorized representative can be a friend or family member of the employee, but it is important to remember that the employer is liable for any violations in connection with the form or the verification process.

These days, during the Form I-9 verification process, employees might provide List B identification documents (e.g., driver's license, state identification card) that expired during the pandemic and were not renewed due to the closures of state and local governmental agencies. As of May 1, 2020, List B documents that expired on or after March 1, 2020 and were not otherwise extended by the issuing authority may be treated the same as if the employee presented a valid receipt for an acceptable List B document for Form I-9 purposes. Within 90 days after the DHS' termination of this temporary policy, the employee must present their employer with a valid, unexpired document to replace the expired List B document presented when they were hired. For List B documents that expired on or after March 1, 2020 where the issuing authority extended the document expiration date due to COVID-19, employers can accept the expired document as an acceptable List B document. In this scenario, the employee is not required to later present a valid unexpired List B document to the employer.

If you have any questions about this information memo, please contact [Joanna L. Silver](#), any [attorney](#) in the [Immigration practice](#), or the attorney in the firm with whom you are regularly in contact.



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